

EXHIBIT K:

DEPOSITION OF SPECIAL AGENT

JAMES KIRK

In The Matter Of:

Robert T. Davis v.

Kenneth F. Kirk

James Kirk

February 4, 2019

Fincun-Mancini, Inc.

1801 E. Ninth Street

Suite 1720

Cleveland, Ohio 44114

(216) 696-2272

Robert T. Davis v.
Kenneth F. Kirk

James Kirk
February 4, 2019

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -
5 Robert T. Davis,)
6 Plaintiff,)
7 vs.)
8 Kenneth F. Kirk, et al.,)
9 Defendants.)
10 - - -
11 Deposition of James Kirk, a defendant herein,
12 called on behalf of the plaintiff for oral
13 examination, pursuant to the Federal Rules of Civil
14 Procedure, taken before Karen A. Toth, Notary Public
15 in and for the State of Ohio, pursuant to notice, at
16 the offices of Gallagher, Sharp, LLP, 1501 Euclid
17 Avenue, 6th Floor, Cleveland, Ohio, 44115, on Monday
18 February 4, 2019, commencing at 10:44 a.m.
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1 APPEARANCES:
2 On behalf of the Plaintiff:
3 Edward A. Icove, Esq.
4 Icove Legal Group, LTD
5 50 Public Square, Suite 3220
6 Cleveland, Ohio 44113
7 On behalf of Defendant City of Cleveland:
8 Brandon Brown, Esq
9 Assistant Director of Law
10 601 Lakeside Avenue, Room 106
11 Cleveland, Ohio 44114
12 On behalf of Defendants Joseph Hergenroeder and
13 James Kirk:
14 Thomas E. Dover, Esq.
15 Gallagher, Sharp, LLP
16 1501 Euclid Avenue
17 6th Floor
18 Cleveland, Ohio 44115
19 Also present:
20 James Higgins
21 - - -
22
23
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1 JAMES KIRK
2 Of lawful age, being first duly sworn, as
3 hereinafter certified, was examined and testified as
4 follows:
5 CROSS-EXAMINATION
6 By Mr. Icove:
7 Q Would you state your name for the record?
8 A James Kirk.
9 Q James, can you give me a little bit of
10 information regarding your background in law
11 enforcement?
12 A In 2009 I became a police officer with the
13 Laurelville Police Department down in Hocking
14 County. I worked there until September of
15 2010 when I took a job with the Norfolk
16 Southern Railroad Police Department up here in
17 Cleveland, Ohio and I've been here presently
18 ever since.
19 Q Did you growing up in Hocking County?
20 A I can't say that I grew up in Hocking County,
21 I didn't grow up anywhere. I moved a lot.
22 Hocking County was one of the areas that I
23 lived at frequently through my childhood.
24 Q Got you. Did you go to high school there?
25 A No.

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1 Q Where did you go to high school?
2 A Teays Valley. In it's Ashville, Ohio. I was
3 there for two years. In my junior year I left
4 and went to Columbus to a technical college or
5 to a technical trade school.
6 Q Are you a certified police officer in the
7 State of Ohio?
8 A Yes, I'm commissioned in the State of Ohio.
9 Q When did you receive that commission?
10 A My first commission was I believe in 2009 for
11 Laurelville. I don't remember the month
12 though.
13 Q Are you related to Kenneth F. Kirk?
14 A Not that I know of.
15 Q Did you meet him?
16 A No.
17 Q If I recall correctly, he testified that he
18 came to visit you while you were in the
19 hospital. Were you unconscious at that point?
20 A I don't know if I was conscious or not but I
21 have retained no memory of meeting him.
22 Q Okay. And to the best of your knowledge,
23 you're not related?
24 A Correct.
25 Q Did you do any checking with anybody in your

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1 family to see if you were -- it's not like --
2 A My family -- I know my immediate family very
3 well and there was no need to check. Most of
4 our family's from McDowell 2County, West
5 Virginia, down on the southwest corner. I
6 know all the Kirks that are my immediate
7 relation and most of them are in prison. And
8 I've been shunned from the family for becoming
9 an officer, so I doubt he's related.
10 MR. DOVER: Let me just say,
11 James, it's very difficult for her to take
12 down something when you both are talking, so
13 let him finish asking then you can answer.
14 A My apologies.
15 Q Not a problem. She's good, but she's not that
16 good.
17 You can only testify to what you can
18 observe, remember and relate. Do you have
19 problems with hearing?
20 A No.
21 Q Okay. So I only need you to testify as to
22 what you can observe, remember or relate; is
23 that fair?
24 A Yes, sir.
25 Q Do you recall anything regarding the incident

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1 that occurred back in October of 2014 with
2 Robert T. Davis?
3 A I recall the day but no interactions with him.
4 Q You don't recall wrestling with him and then
5 falling over an embankment?
6 A No.
7 Q Do you recall being in the hospital?
8 A Yes.
9 Q When was the first time you recall after this
10 incident being in the hospital? The incident
11 occurred on the 27th of August. Was it the
12 next day or the day after, two days later?
13 A I recall -- I don't understand the question.
14 Q That's fine. If you don't understand it you
15 should stop me.
16 Was it two or three days after the
17 incident that you recall seeing him? I mean,
18 that you recall -- excuse me. That you recall
19 waking up and --
20 A No, I recall waking up that day in the
21 hospital.
22 Q And you don't recall anything that happened
23 during that day?
24 A I recall things previous to that day, yes.
25 Q But you don't recall anything about that

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1 particular incident?
2 A I recall arriving on scene to that area.
3 Q What do you recall?
4 A I recall arriving on scene to assist one of
5 our special agents in closing some doors and
6 placing items back inside the train that had
7 been burglarized. I helped him get the stuff
8 back in there along with SA Hergenroeder.
9 Once we were finished with that we checked the
10 front of the train, or we went to check the
11 front of the train to see if there was
12 anything going on up there.
13 I recall driving on Broadway Avenue
14 northbound and I recall getting on the radio
15 to Joe who was driving behind me and telling
16 him that when we got to Jones and Broadway we
17 were going to make a right, go on the railroad
18 property and check the train.
19 I then recall what appeared to be like
20 a long blink. Like how you kind of blink and
21 then your eyes open. And then I had no
22 clothes on. I was in a CT scanner. At my
23 feet I could see my then supervisor John
24 Anthony staring at me. And for the duration
25 of the incident that's what I remember.

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<p>1 Q You don't remember chasing --</p> <p>2 A No.</p> <p>3 Q -- someone?</p> <p>4 A No.</p> <p>5 Q And you don't remember falling off the</p> <p>6 embankment?</p> <p>7 A No.</p> <p>8 Q You don't remember anything that happened</p> <p>9 between then and seeing Mr. Anthony?</p> <p>10 A No.</p> <p>11 Q Did you ever have an opportunity to review the</p> <p>12 police report which has been marked Exhibit C?</p> <p>13 A I have read the report. It's been multiple</p> <p>14 years since I've read it. And I did not take</p> <p>15 the opportunity to read it prior to this.</p> <p>16 Q That's fine. When you did read it was there</p> <p>17 anything in the report that you thought was</p> <p>18 inaccurate or misleading or false?</p> <p>19 A Not that I can recall.</p> <p>20 Q Okay.</p> <p>21 A Would you like me to read it now?</p> <p>22 Q I would like you to briefly look it over.</p> <p>23 MR. ICOVE: Let's go off the</p> <p>24 record and take your time.</p> <p>25 (Discussion off the record.)</p>	<p>1 A Yes, I was off for nine working days.</p> <p>2 Q During that time were you treated for your</p> <p>3 problem?</p> <p>4 A Yes.</p> <p>5 Q And who did you treat with; do you recall?</p> <p>6 A I do not.</p> <p>7 Q Was it a doctor affiliated with Metro General,</p> <p>8 to the best of your knowledge?</p> <p>9 A I believe so. I had to come up to Cleveland</p> <p>10 and meet with a doctor up here, but I don't</p> <p>11 recall his name.</p> <p>12 Q Was it near West 25th Street?</p> <p>13 A I believe so.</p> <p>14 Q Have you gotten better since that incident?</p> <p>15 A Define better.</p> <p>16 Q You had problems with loss of consciousness,</p> <p>17 right?</p> <p>18 A Correct.</p> <p>19 Q Have you had any problems with loss of</p> <p>20 consciousness since then?</p> <p>21 A Not with loss of consciousness, no.</p> <p>22 Q Have you had any other problems that relate to</p> <p>23 this particular incident?</p> <p>24 A I have had some other physical ailments. At</p> <p>25 this time I have -- the doctors I've spoken</p>
Page 10	Page 12
<p>1 MR. ICOVE: Let's go back on the</p> <p>2 record.</p> <p>3 By Mr. Icove:</p> <p>4 Q You've had an opportunity to read the</p> <p>5 narrative of that report?</p> <p>6 A Yes, sir.</p> <p>7 Q Is there anything in there that you believe,</p> <p>8 as we sit here today, is false or misleading</p> <p>9 or inaccurate?</p> <p>10 A Well, I can't recall any of the information</p> <p>11 that pertained to that report.</p> <p>12 Q Okay. That's fair. When did you get</p> <p>13 discharged from the hospital?</p> <p>14 A I believe roughly three hours after I was</p> <p>15 taken in, but that was based on the time that</p> <p>16 was told to me.</p> <p>17 Q Did you receive, to the best of your</p> <p>18 knowledge, a diagnosis or any information</p> <p>19 regarding your condition?</p> <p>20 A If I remember correctly I believe I was told</p> <p>21 that I had a skull fracture and an impact</p> <p>22 burst, but I never heard that term up until</p> <p>23 that time.</p> <p>24 Q Were you off of work after that particular</p> <p>25 incident for any time?</p>	<p>1 with about them have not been able to confirm</p> <p>2 that that is what they were from.</p> <p>3 Shortly after the incident I had issues</p> <p>4 with numbness whenever I turned my head or</p> <p>5 looked down, causing my arms to go numb, my</p> <p>6 legs to tingle and a lot of issues that the</p> <p>7 medical doctor in Barberton, Ohio -- or I'm</p> <p>8 sorry, Wadsworth, Ohio advised that it was an</p> <p>9 inflammation of my spinal cord and I had to</p> <p>10 take medication for that. That was within a</p> <p>11 few months of the incident.</p> <p>12 Q Okay. I don't have any other questions.</p> <p>13 Mr. Brandon Brown, who is the gentleman to my</p> <p>14 right, he is from the City of Cleveland and</p> <p>15 he's allowed to ask you a couple questions</p> <p>16 too, if he wants to.</p> <p>17 MR. BROWN: Yeah, I have a few.</p> <p>18 CROSS-EXAMINATION</p> <p>19 By Mr. Brown:</p> <p>20 Q How are you doing today?</p> <p>21 A I'm wonderful. How are you, sir?</p> <p>22 Q I'm all right. So I just have a couple</p> <p>23 questions. So do you have any lingering</p> <p>24 effects from the injuries that you sustained</p> <p>25 at that incident today?</p>

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1 A I do not know. I have a lot of physical items
2 and a lot of things that have happened to me
3 throughout my life and I am unable to
4 specifically point out whether or not it was
5 this or a multitude of things growing up on a
6 farm and other things that I do in my life as
7 to whether or not they are correlated.
8 Q Okay. And you mentioned earlier that the last
9 thing you kind of remember is pulling up to
10 the scene of the incident and radioing to
11 Special Agent Hergenroeder?
12 A Correct.
13 Q Do you recall at all radioing to anybody else,
14 any backup or anything like that?
15 A No.
16 Q And in the area, just so I can kind of get a
17 picture of the area, there is the intersection
18 of Broadway and Harvard, correct?
19 A Correct.
20 Q And the tracks run over both streets?
21 A Yes.
22 Q Or just one street?
23 A Both.
24 Q Both streets. So when you pulled up was it --
25 I don't know if you recall this, but was it

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1 the section that ran over Broadway or over
2 Harvard?
3 A I do not recall.
4 Q You don't recall. Okay. And do you have any
5 other memory of meeting Kenneth Kirk?
6 A I have no memory of ever meeting him thus far
7 in my life.
8 Q Okay. That's all.
9 MR. ICOVE: Thank you much for
10 coming today. You have an opportunity to
11 review your deposition, and your attorney can
12 advise you about that at this time.
13 MR. DOVER: He'll read.
14 (Deposition concluded at 10:57 a.m.)
15 (Signature waived.)
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1 SIGNATURE PAGE
2
3 In Re: Robert T. Davis v. Kenneth F. Kirk, et al
4 Case No.: 1:16CV2174
5 Deponent: James Kirk
6 Date: Monday, February 4, 2019
7
8 To the Reporter:
9 I have read the entire transcript of my
10 Deposition taken in the captioned matter or the same
11 has been read to me. I request that the following
12 changes be entered upon the record for the reasons
13 indicated.
14 I have signed my name to the Errata Sheet and
15 the appropriate Certificate and authorize you to
16 attach both to the original transcript.
17
18
19
20 James Kirk
21 Subscribed and sworn to before me this
22 _____ day of _____, 2019.
23
24 Notary Public
25 My commission expires: _____.

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1 I have read the foregoing transcript from page
2 1 through page 14 and note the following
3 corrections:
4 PAGE-LINE REQUESTED CHANGE REASON FOR CHANGE
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25 James Kirk [Date]

1 State of Ohio,)
2 County of Cuyahoga,) SS: CERTIFICATE

3 I, Karen A. Toth, Notary Public in and for the
4 State of Ohio, duly commissioned and qualified, do
5 hereby certify that the within named witness,
6 James Kirk, was by me first duly sworn to
7 testify the truth, the whole truth, and nothing but
8 the truth in the cause aforesaid; that the testimony
9 then given by him was by me reduced to
10 stenotypy/computer in the presence of said witness,
11 afterward transcribed, and that the foregoing is a
12 true and correct transcript of the testimony so
13 given by him as aforesaid.

14 I do further certify that this deposition was
15 taken at the time and place in the foregoing caption
16 specified and was completed without adjournment

17 I do further certify that I am not a relative,
18 counsel, or attorney of either party, or otherwise
19 interested in the event of this action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and affixed my seal of office at Cleveland,
22 Ohio on this 11th day of February, 2019.

23

24 Karen A. Toth, Notary Public in
25 and for the State of Ohio.
 My Commission expires May 6, 2023.

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